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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PENSKE MEDIA CORPORATION,

Plaintiff,

-against-

SHUTTERSTOCK, INC.,

Defendant.

1:20-cv-04583 (MKV)

**ORDER DENYING WITHOUT  
PREJUDICE CROSS MOTIONS  
FOR SUMMARY JUDGMENT**

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff Penske Media Corporation (“PMC”) brought this action against Shutterstock, Inc. (“Shutterstock”), originally asserting a myriad of federal and state claims in connection with the breakdown of an agreement between the parties precipitated by the COVID-19 pandemic. The parties subsequently filed a Stipulation of Voluntary Dismissal of all federal claims [ECF No. 178], leaving only their competing state law breach of contract claims (and related claims for frustration of purpose doctrine and restitution after rescission). The parties now cross-move for summary judgment on the surviving contract-related claims.

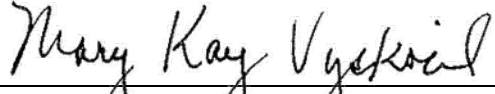
The Court, as it is independently obligated to do, has assessed whether it has subject matter jurisdiction in connection with this action. *See Henderson v. Shinseki*, 562 U.S. 428, 434 (2011); *In re Tronox Inc.*, 855 F.3d 84, 95 (2d Cir. 2017); *see e.g.*, *Digitel, Inc. v. MCI Worldcom, Inc.*, 239 F.3d 187, 189-90 (2d Cir. 2001) (affirming the district court’s *sua sponte* dismissal on subject-matter jurisdiction grounds); *Curcio v. Abrams*, No. 22-693, 2023 WL 31183, at \*2 (2d Cir. Jan. 4, 2023) (summary order) (affirming the district court’s *sua sponte* dismissal). After review, the parties’ cross motions for summary judgment are hereby DISMISSED *without* prejudice based on the apparent lack of subject matter jurisdiction in light of the parties’ voluntary discontinuance of

the claims upon which federal jurisdiction was invoked. [ECF No. 178]. The Court will simultaneously enter a scheduling order to afford the parties an opportunity to be heard with respect to the Court's inclination to dismiss this case *without* prejudice under Section 1367(c), which provides that "[t]he district courts may decline to exercise supplemental jurisdiction over a claim under [§ 1367(a)]."

For the foregoing reasons, the parties' cross motions for summary judgment are DENIED without prejudice. The Clerk of Court is respectfully requested to close docket entry numbers 167 and 169.

**SO ORDERED.**

**Date: March 11, 2024**  
**New York, NY**

  
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**MARY KAY VYSKOCIL**  
**United States District Judge**